AJMER SINGH v. PUBLIC PROSECUTOR

[A.Cr.J. (Chan Sek Keong J.C.) November 7, 1986]
[Singapore – Magistrate's Appeal No. 429 of 1985]

Criminal Law and Procedure – Riding under influence of drink – Admissibility of blood specimen – Identification of the appellant's blood – Criminal Procedure Code (Cap. 113 Rev. Edn. 1970), s. 368.

Road Traffic – Riding under influence of drink – Admissibility of blood specimen – Identification of the appellant's blood – Road Traffic Act (Cap. 92 Rev. Edn. 1970), ss. 69(1), 70 & 71.

Evidence – Blood specimen – Admissibility.

The appellant was charged with riding a scooter along a road whilst under the influence of drink to such an extent as to be incapable of having proper control of such vehicle, an offence under section 69(1) of the Road Traffic Act (Reprint) ("the RTA"). He claimed trial and was convicted on October 31, 1985, and sentenced to a fine of $800 and disqualified from holding or obtaining a class 2 driving licence for a period of 2 years. The appellant appealed against his conviction and sentence. The appellant contended, *inter alia*, that at the end of the prosecution case he had no case to answer as there was no evidence which was legally admissible to prove the alcohol content of his blood. The appellant argued that the blood specimen taken was inadmissible in evidence.

Held: (1) in the present case the magistrate was correct in refusing to exclude the report on the blood specimen;

(2) since the issue of lack of consent was not raised in the lower courts, the appellant cannot raise the issue before the present court: *R.* v. *Sadler/R.* v. *Palfrey*(9) applied;

(3) in the present case if there had been any confession or admission it was merely to the fact that the appellant had an excessive amount of alcohol in his blood and not to the fact that he was unable to control his scooter whilst under the influence of drink;

(4) the report of the doctor who examined the appellant (P5) clearly did not comply with the requirements of section 70(3) as it does not even certify that the blood was taken and with the consent of the appellant. P5 was certainly not evidence of any matters certified or mentioned therein unless it was a certificate admitted under and in accordance with section 368 of the Criminal Procedure Code;

(5) however, P6 was a document admissible under section 368 of the Criminal Procedure Code as *prima facie* evidence of the facts stated therein *i.e.* that the appellant had in his blood 152 mg. of alcohol per 100 ml. of blood. This evidence alone was sufficient for the defence to be called at the end of the prosecution's case;

(6) as regards sentence, counsel for the appellant had not made a case that it was excessive. The appeal against conviction and sentence was dismissed.

Cases referred to:

(1) *R.* v. *Bove* [1970] R.T.R. 261; 54 Cr. App. R. 316.
(2) *R.* v. *Kuruma* [1955] A.C. 197.
(3) *R.* v. *Payne* [1963] 1 W.L.R. 637.
(4) *Scott* v. *Baker* [1969] 1 Q.B. 659.
(5) *Spicer* v. *Holt* [1976] R.T.R. 389; [1977] A.C. 987.
(6) *R.* v. *Trump* [1980] R.T.R. 274; 70 Cr. App. R. 300.
(7) *R.* v. *Sang* [1979] 3 W.L.R. 263.
(8) *Cheng Swee Tiang* v. *Public Prosecutor* [1964] M.L.J. 291.
(9) *R.* v. *Sadler/R.* v. *Palfrey* [1970] R.T.R. 127; 54 Cr. App. R. 217.
(10) *Pakala Narayana Swami* v. *Emperor* (1939) 66 I.A. 66; A.I.R. 1939 P.C. 47.
(11) *R.* v. *Orrell* [1972] R.T.R. 14; [1972] Crim. L.R. 313.
(12) *Tremlett* v. *Fawcett* [1984] 1 R.T.L.R. 68; *The Times*, October 9, 1984.

MAGISTRATE APPEAL.

Kalpanath Singh for the appellant.
Ismail Hamid (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Chan Sek Keong J.C.: The appellant was charged with riding a scooter along a road whilst under the influence of drink to such an extent as to be incapable of having proper control of such vehicle, an offence under section 69(1) of the Road Traffic Act (Reprint) ("the RTA"). He claimed trial and was convicted on October 31, 1985 and sentenced to a fine of $800 and disqualified from holding or obtaining a Class 2 driving licence for a period of two years.

The facts adduced by the prosecution were as follows: on December 7, 1983, at about 8.20 p.m., the appellant was riding motor scooter AZ7747 J along Telok Blangah Way at about 50 k.m.p.h. when, according to him, he suddenly felt giddy. He applied the brake but the scooter went out of control and he fell off. He remembered being carried to the side of the road. The police arrived at the scene at about 8.28 p.m. and established that the scooter had skidded and that the appellant had a head injury. The appellant was not arrested but was taken to the Singapore General Hospital where he was examined about two hours later by Dr. Koh Cheng Huat (PW1) who also, at about 10.45 p.m. took a specimen of the appellant's blood for alcohol analysis. The specimen was analysed by Dr. Danny Lo Siaw Teck, the Senior Scientific Officer.

At the trial the report of PW1 dated January 26, 1984, (P5) and the report of Dr. Danny Lo (P6) were admitted in evidence. P5 states as follows:

"On admission, he was conscious, vital signs stable. Periorbital haematoma of both eyes with 2 cm lacerations over the right eyelid. There was no neurological deficit. He was found also to be hypertensive.

Skull xray – no abnormalities detected.
ECG – no abnormalities detected.
Chest xray – no abnormalities detected.
Blood alcohol level = 152 mg ethanol per 100 ml of blood."

P6 states as follows:

"I, Dr. Danny Lo Siaw Teck Senior Scientific Officer, Singapore do hereby certify that at 9.40 am on the 8th day of December 1983 there was handed to me by S. Ganesan, one sample blood seal General Hospital Singapore and marked Ajmer Singh, Ad. No. 2038228G.

On analysis, I found the blood sample to contain 152 mg ethanol per 100 ml blood."

PW1 gave evidence and said that when he examined the appellant, the appellant had strong alcohol in his breath and that at 8 a.m. the next morning (*i.e.* about 12 hours after the accident), he had observed the appellant's gait was unsteady. PW1 when cross-examined, admitted that he did not know the diffusion rate but he agreed that on the basis of the statement at page 308 of *J.K. Mason's* Forensic Medicine for Lawyers (that the diffusion rate of ethanol is 15 mg. per 100 ml. of blood per hour) the alcohol content in the appellant's blood blood could have been zero at the time he observed the appellant's gait. PW1 nevertheless asserted that he was positive that the appellant's unsteady gait was due to the after effect of alcohol and not hypertension or the injury to the appellant's head. PW1 was not asked or cross-examined as to whether the appellant's blood was taken with consent.

On the basis of his evidence, the Magistrate called for the defence. The appellant's story was that whilst in his nephew's house, he and his nephew had drunk 4 bottles of beer, that he suffered from hypertension, that he fell from his scooter not because of drink but because a motor car overtook him and stopped in front of him; he had to apply his scooter brakes suddenly and fell off his scooter. He also said that when the car overtook him, he had a slight giddiness and that when he applied the brakes he felt giddy. He thought that his giddiness was due to his blood pressure. He also admitted that whenever he consumed alcohol, he felt a slight intoxication. Under cross-examination, he said that he is not a good drinker and would get intoxicated by small amounts of drinks.

At the end of the case for the defence, the Magistrate convicted the appellant. He held that the appellant's fall was due to his high state of intoxication which made him unable to control his scooter. The Magistrate also held as a matter of law that section 70 of the RTA did not prohibit the admissibility of the alcohol content of the appellant's blood as evidence as it was taken without compulsion, that the presumption under section 71 of the RTA applied, but that even if it did not, the evidence of PW1 was sufficient to prove the prosecution's case.

The appellant now appeals against his conviction and sentence. In the light of the appellant's own evidence, his counsel has no hope of persuading this court that the appellant has been wrongly convicted. However, the appellant's case is that at the end of the prosecution case, he had no case to answer as there was no evidence which was legally admissible to prove the alcohol content of his blood. Counsel contended that the appellant's blood was taken:

(a) when he was not arrested under section 68 when he was taken to or under arrest whilst in hospital;

(b) without his having been required to do so by a police officer under section 70(1);

(c) without his consent as required under section 70(3); and

(d) without a warning as required under section 70(4),

and as a consequence, the specimen was inadmissible in evidence.

Counsel referred to the English case of *R.* v. *Bove*,[1] where the accused who had been unlawfully arrested under section 2 of the Road Safety Act, 1967 was acquitted on a charge of failing to provide a specimen of his blood without reasonable excuse under section 3(3) on the ground that the requirements of section 3(1) (one of which was he could not be under an obligation to provide the specimen unless he was lawfully arrested) have not been complied with. On page 263 of the report, Lord Chief Justice Parker said:

"There is no doubt that in every decision of this Court, beginning with *Scott* v. *Baker* (1968) 52 Cr. App. R. 566; [1969] 1 Q.B. 659 and ending with *Pinner* v. *Everett (supra)* in the House of Lords, it has always been assumed to be the law that a man could not be convicted of an offence under section 1 unless a specimen of blood or urine had been obtained pursuant to section 3. When one turns to section 3, one finds before a specimen for a test can be required that there must have been an arrest under section 2 of the Act or under section 4 of the principal

Act, and that there must have been an opportunity for a breath test at the police station. It has always been assumed in case after case that an invalid arrest will make the certificate inadmissible, and accordingly that will be a defence to a charge under section 1 of the Act."

Counsel submitted that the type of illegality involved in *R.* v. *Bove*, being in the nature of direct contravention of a statute, is different from the type of illegally obtained evidence (*i.e.* by trickery or other improper means) that was held to be admissible under the ruling in *R.* v. *Kuruma*.[2] He also referred to *R.* v. *Payne*[3] to show that the courts in England have excluded evidence of unfitness to drive which was obtained unfairly from the accused.

It is not necessary for me to consider the English cases in any detail other than to note that they are decisions based on the construction of the rather unusual wordings of the relevant provisions of the English road traffic legislation (which have now been repealed or modified). A clear example of the approach is the statement of Lord Parker C.J. in *Scott* v. *Baker*[4] at p. 671 where he said:

"Section 1 – now section 6(1) of the Act of 1972 – 'provides that it shall only be an offence if the person drives a motor vehicle having consumed alcohol which is later shown to exceed the prescribed limit on the provision of a specimen under section 3' – now section 9 – '... it will be seen ... that there can ... be no provision of a specimen under section 3 unless the person has been arrested under subsection (4) of section 2' – now section 8(4) – 'which in turn can only be made after what I may call the first breath test; and also the specimen can only be provided if the person has been given an opportunity under subsection (7) of section 2 to have a second breath test. It seems to me quite impossible to argue that a specimen was properly provided under section 3, as it has to be before there is an offence, unless those matters have first been complied with'."

The above statement was approved by the House of Lords in *Spicer* v. *Holt*[5] where their Lordships decided:

"that sections 5(5), 8 and 9 [of the Road Traffic 1972] laid down a code of procedure to be followed before a person could be convicted of an offence under section 6(1) of the Act, and each step in the procedure must be taken before proceeding to the next step; that the arrest of the defendant was admittedly unlawful, and that it was therefore not an arrest under section 8(5), as it purported to be; and that accordingly, no evidence of subsequent analysis of a specimen of blood or urine from the defendant was admissible."

In my view, the line of decisions culminating in *Spicer* v. *Holt*[5] has no application to the present case, as section 68 of the RTA, under which the appellant was convicted, makes no reference whatever to any procedural requirements whether in section 70 or otherwise for taking a specimen and is not part of a code of procedure, each step of which has to be followed. An English decision which has more relevance to the present case is *R.* v. *Trump*[6] where "... the appellant was arrested under section 5(5) of the Road Traffic Act 1972, taken to a police station, where he was required to provide a specimen for a laboratory test and warned in accordance with section 9(7) that failure to provide the specimen make him liable for imprisonment, a fine and disqualification. He provided a specimen of blood, which on analysis revealed a concentration of alcohol above the prescribed limit. He was tried on a charge of driving when unfit to drive, contrary to section 5(1). The analysis was admitted in evidence and the appellant was convicted. He appealed against conviction on the ground that the analysis evidence should have been excluded since the laboratory test specimen had been unlawfully obtained, in that he had been constrained to provide it because of the warning in accordance with section 9(7) so that it had not been taken from him with his consent within section 7(1). The Crown conceded that the appellant's arrest was unlawful, and the appellant conceded that the constable was entitled to require a breath test by virtue of section 8(2) and had a power of arrest under section 8(4)." Dismissing the appeal, the Court of Appeal held that, as the specimen of blood was obtained as a result of the warning given under section 9(7) of the Act and, therefore, not with the appellant's consent within the meaning of section 7(1) of the Act, there was no obligation under section 7(1) to admit the analysis evidence; but that the evidence provided by the appellant was analogous to an admission and, therefore, it was within the discretion of the judge to admit it; and that, had the judge excluded the analysis evidence, his discretion would have been exercised improperly.

On the issue of admissibility of improperly obtained evidence, the Court of Appeal referred to *R.* v. *Sang*[7] and said (at page 276) that in that case the House of Lords held:

"that (1) a judge in a criminal trial has a discretion to refuse to admit evidence if its prejudicial effect outweighs its probative value; (2) an involuntary confession or admission is inadmissible in evidence; and (3) there is room for further consideration of evidence tantamount to a self-incriminatory admission which was obtained from the defendant, after the offence had been committed, by means which would justify a judge in excluding an actual confession which had the like self-incriminating effect, and also for consideration of the effect of a judge's duty to ensure a

fair trial. Apart from this there is no general exception to exclude evidence improperly obtained."

The Court of Appeal then concluded that a limited exception in cases to improperly obtained admissions was recognised by the House of Lords to exist in *R.* v. *Sang*, that the extent of the exception was not fully considered and that *R.* v. *Payne* was still good law. As counsel for the appellant has cited *R.* v. *Payne* in support of his argument, I will now have to consider its relevance to the present proceedings.

In *R.* v. *Payne*, the defendant, who was charged with drunken driving, had been induced to submit himself to examination by a doctor to see if he was suffering from any illness or disability, upon the understanding that the doctor would not examine him for the purpose of seeing whether he was fit to drive. The doctor gave evidence of the defendant's unfitness to drive based upon his symptoms and behaviour in the course of that examination. He was convicted on such evidence. The Court of Criminal Appeal quashed his conviction on the ground that the trial judge ought to have exercised his discretion to exclude the doctor's evidence. *R.* v. *Payne* was considered by the House of Lords in *R.* v. *Sang*. Lord Diplock, Lord Fraser of Tulleybelton and Lord Scarman regarded the case in *R.* v. *Payne* as being "analogous to unfairly inducing a defendant to confess to an offence, and the short judgment of the Court of Criminal Appeal is clearly based upon the maxim *nemo debet prodere se ipsum*" (Lord Diplock at page 271). I would respectfully adopt their Lordship's view of *R.* v. *Payne* as what the accused was induced to do could have amounted to an involuntary confession to the doctor that he was unfit to drive.

The legal position after *R.* v. *Sang* as explained by *R.* v. *Trump* as regards evidence analogous to self-incriminating admission is that its admissibility is subject to the discretion of the judge. The same rule applies in Singapore and the actual decision of the Court of Criminal Appeal in *Cheng Swee Tiang* v. *Public Prosecutor*[8] does not conflict with *R.* v. *Sang*. Accordingly, in the present case, the Magistrate was correct in refusing to exclude P6 in evidence.

I come now to the submission on lack of consent on the part of the appellant in giving a specimen of his blood to PW1. In *R.* v. *Trump*, the Court of Appeal held that the appellant had not given his consent because he gave it in response to a warning to him. But the Court of Appeal also held that "Giving the blood was very close to making an admission that the appellant had consumed an excessive amount of alcohol" thereby making it clear that what was done there did not amount to an involuntary admission. In the present case the lack of consent is of a different kind. Here, no warning was given to the appellant, but he did not appear to have objected to his blood being taken. Was there consent for the purpose of section 70? If not, did it amount to an involuntary admission of guilt? A perusal of the Appeal Record shows that in the proceedings below counsel for the appellant based his submissions on inadmissibility wholly on the basis of contravention of section 70 in that his client had not been arrested under section 68 or 69 or given a warning. The issue of consent was never raised by counsel for the appellant in cross-examination or in both his speeches at the end of the prosecution case and at the end of the defence case. If the issue had been raised then PW1 or even the appellant himself might have provided the evidence. Should he be allowed to raise it on appeal? A similar situation occurred in *R.* v. *Sadler/R.* v. *Palfrey*[9] where the Court of Appeal refused to consider a submission of no consent on the ground that it was not raised in the courts below in these words "It is entirely as an afterthought that it is said that it has not been established affirmatively that the blood specimen in either of the two cases was taken with the consent of the accused." This observation, in my view, applies to this ground of appeal. Accordingly, I do not find it necessary to consider whether or not the appellant gave his consent, and in that connection, whether "consent" in section 70(3) means consent given expressly as distinguished from consent given impliedly, *i.e.* without compulsion by a failure to object to blood being taken. But, even assuming that no consent had been given, the appellant would still have to overcome the hurdle as to whether the evidence amounted to an involuntary confession or admission of a nature that renders the evidence inadmissible. In *Pakala Narayana Swami* v. *Emperor*[10] Lord Atkin said that "A confession must either admit in terms the offence or at any rate substantially all the facts which constitute the offence." Here, if there had been any confession or admission, it was merely to the fact that the appellant had an excessive amount of alcohol in his blood and not to the fact that he was unable to control his scooter whilst under the influence of drink.

I now deal with the admissibility of P5 for the purpose of section 70(3) of the RTA although the Grounds of Decision of the Magistrate do not

advert to this issue. Section 70(3) provides that:

"For the purposes of any proceedings for an offence under section 68 or 69 or subsection (2), a certificate purporting to be signed by a medical practitioner that he took a specimen of blood or urine from a person with his consent shall be evidence of the matters so certified and of the qualifications of the medical practitioner.

Provided that such certificate shall not be accepted as evidence for the prosecution unless a copy thereof had been served on the accused not less than 7 days before the hearing."

Section 70(3) raises an irrebuttable presumption in respect of the qualification of the medical practitioner and of the matters so certified *i.e.* the medical practitioner took his specimen with the consent of the person. P5 clearly does not comply with the requirements of section 70(3) as it does not even certify that the blood was taken and with the consent of the appellant. P5 was certainly not evidence of any of the matters certified or mentioned therein unless it was a certificate admitted under and in accordance with section 368 of the Criminal Procedure Code or PW1 has given evidence of such matters.

I turn to section 71 of the RTA which creates the presumption of incapability of having proper control of a motor scooter. Neither P5 nor P6 was a certificate which fulfilled the requirements of section 71 itself. Not only was the appellant not arrested or warned prior to his blood being taken, P5 did not comply with section 70(3) and P6 was signed by the Chief Scientific Officer, who may or may not be a medical practitioner. Accordingly, I agree with counsel for the appellant that the Magistrate was wrong in applying the presumption against the appellant.

Has the prosecution proved its case without the presumption in section 71? The Magistrate decided in the affirmative. I agree with him. P6 was a document admissible under section 368 of the Criminal Procedure Code as *prima facie* evidence of the facts stated therein *i.e.* that the appellant had in his blood 152 mg. of alcohol per ml. of blood. According to J.K. Mason at page 309 of Forensic Medicine For Lawyers (a textbook cited by the appellant's counsel to prove the diffusion rate of alcohol in blood), the likely practical effect, on an average assessment, of a given blood concentration of alcohol, at 100-200 mg. per 100 ml. would be: "Distinct loss of skill, slurring of speech and commencing loss of co-ordination,"; that "much depends on the conditions for drinking, the availability of food, *etc.* and that habituation to alcohol occurs – the reason for this not being entirely clear – that the same blood concentration will have a lesser effect on the regular drinker than on the novice." In my view, this evidence alone is sufficient for the defence to be called at the end of the prosecution's case. At the end of the case for the defence, there was no longer any doubt that the appellant was guilty as charged, as he admitted that he would get intoxicated very easily and that he fell from his scooter after riding it a short distance from his nephew's house.

Counsel for the appellant has also criticised the Magistrate for placing too much reliance on PW1's statement that the unsteady gait of the appellant 12 hours after the accident was due to the after effect of alcohol (when there could have been no alcohol in the appellant's blood) and not to hypertension or the injury to his head. As there is sufficient objective evidence to sustain the conviction of the appellant, with PW1's evidence on this point, I do not find it necessary to decide whether or not any weight should have been given to PW1's evidence. I disregard it for the purpose of this appeal.

Counsel for the appellant also argued that there was no evidence that the blood examined by the chemist was the blood taken by PW1 from the appellant. He submitted that the fact that the bottle or container was labelled "Ajmer Singh Ad. No. 2038228C" was insufficient to prove the chain of identification. He cited *R.* v. *Orrell*[11] where it was held that it was sufficient for the prosecution to prove by written markings on the sample bottle of urine that the sample of urine taken from the defendant was that received by the laboratory and analysed by the analyst. In *Tremlett* v. *Fawcett*[12] it was held there was no need for the prosecution to prove specifically that a sample of urine had been sent from the police to the laboratory for analysis. In that case the sample had been marked and placed in an envelope signed across the seal by the police officer with the envelope bearing the name of the defendant. The analyst had certified that he had received the specimen in a sealed container. In the present case, P6 itself refers to a sample of blood sealed General Hospital Singapore and marked "Ajmer Singh Ad. No. 2038228G." In my view, this is sufficient to prove the chain of identification and accordingly I reject counsel's submission on this point.

As regards sentence, counsel for the appellant has not made out a case that it was excessive.

In the result, the appeal against conviction and sentence is dismissed.

Appeal dismissed.

Solicitors: *Kalpanath & Co.*

HAU KHEE WEE & ANOR. v. CHUA KIAN TONG & ANOR.

[A.C.J. (Chan Sek Keong J.C.) November 22, 1986]

[Singapore – District Court Appeal No. 27 of 1986]

Practice and Procedure – Appeal – Time – Leave to file Record of Appeal out of time – Factors to consider – Subordinate Courts Rules, O.54 r.7.

The appellants claimed damages for negligence against the respondents. The Magistrate by a judgment dated June 5, 1986, dismissed the claim. The appellants appealed against that decision. However, the appellants were out of time by about 24 days as to the filing of the Record of Appeal. They applied for leave to file the Record of Appeal out of time.

The only reason given for the delay was that the solicitors for the appellants had been trying to obtain from the police a set of photographs which were not produced at the trial and which they said were vital to the appellants' case.

Held, granting the application: (1) the factors to be taken into account in deciding whether to grant an extension of time to file a notice of appeal are (a) the length of the delay; (b) the reasons for the delay; (c) the chances of the appeal succeeding if time for appealing is extended; and (d) the degree of prejudice to the would be respondent if the application is granted;

(2) in the present case, taking into account all the factors and the material evidence, the infant appellant should not be denied the opportunity to have his appeal heard.

[*Editorial Note:* Although the application was allowed, the costs of the application were awarded to the respondents.]

Cases referred to:

(1) *Tan Chai Heng* v. *Yeo Seng Choon* [1981] 1 M.L.J. 271.
(2) *Cheah Teong Tat* v. *Ho Gee Seng & Ors.* [1975] 2 M.L.J. 149.
(3) *Lee Guat Eng* v. *Tan Lian Kim* [1985] 2 M.L.J. 196.
(4) *Government of Malaysia* v. *Sim Siok Eng* [1978] 2 M.L.J. 32.
(5) *Revici* v. *Prentice Hall Incorporated & Ors.* [1969] 1 W.L.R. 157.
(6) *C.M. Van Stillevoldt B.T.* v. *EL. Carriers Inc.* [1983] 1 W.L.R. 207.
(7) *Lau Foo Sun* v. *Government of Malaysia* [1970] 2 M.L.J. 70.
(8) *Gan Hay Chong* v. *Siow Kian Yuh* [1975] 2 M.L.J. 129.
(9) *Ratnam* v. *Cumarasamy* [1965] 1 M.L.J. 228.

DISTRICT COURT APPEAL.

Soh Kim Chuan for the appellants.
V.K. Rajah for the respondents.

Cur. Adv. Vult.

Chan Sek Keong J.C.: This is an application by the appellants for leave to file the Record of Appeal out of time. The appellants had appealed against the judgment of the Magistrate dated June 5, 1986 when he dismissed the claim of the appellants for damages for negligence against the respondents.

The Notice of Appeal was filed on June 16, 1986 and by virtue of Order 54 Rule 7 of the Subordinate Courts Rules, the last day for filing the Record of Appeal was on August 16, 1986. This was not done and on September 8, 1986, the appellants' solicitors applied to this court by summons-in-chambers for extension of time. As this procedure was wrong, the solicitors on September 11, 1986, filed this Notice of Motion. The appellants are out of time by about 24 days.

The only reason given for the delay was that the solicitors for the appellants had been trying to obtain from the police a set of photographs which were not produced at the trial and which they said were vital to the appellants' case. Prior to commencing proceedings in the Magistrate's court, the appellants' solicitors had on January 16, 1985 written to the Jurong Police Station for copies of all relevant police reports, sketch plan and damage report relating to the accident. On February 15, 1985, the Jurong Police Station sent a copy of the 1st Information Report to the solicitors. On March 13, the solicitors wrote to the Jurong Police Station for particulars of the driver of the vehicle involved in the accident and his employer and the insurers. On April 7, April 25 and May 7, 1985, respectively, reminders were sent to the police. On May 8, 1985, the police replied that the particulars were not available as investigation was not completed and that the other party did not lodge a police report on the accident. On November 6, 1985, the police wrote to the 2nd appellant direct to inform him that they were not taking further action against the driver and giving the particulars of the driver.

The appellants commenced proceedings in